RE CHEN CHONG FATT WILLY

EX PARTE HITACHI LEASE (SINGAPORE) PTE. LTD.

[O.Bk. J. (Rajah J.) August 13, 1986]

[Singapore — In Bankruptcy No. 2485 of 1985]

Bankruptcy — Notice — Founded upon two separate judgments — Amendment of notice — Leave refused.

In this petition the creditor company sought to make the debtor a bankrupt on the ground that he had failed to comply with the requirements of a bankruptcy notice for the payment of a sum of $26,649.16 due on two judgments. The Official Assignee objected to the petition on the ground that the bankruptcy notice was bad and therefore the petition must fail. The creditor company contended that although they were two separate judgments obtained in one suit they were really one final judgment, arising out of a breach of an agreement against the debtor.

Held: (1) a bankruptcy petition cannot be founded on two separate judgments even though it may be obtained in the same suit. In this case there were two judgments although they were in the same suit, one a consent judgment and the other a contested judgment. Execution on these two judgments would have to be levied separately;

(2) leave to amend the bankruptcy notice must be refused. Leave to withdraw the petiton allowed.

Cases referred to :

(1) *In re a Bankruptcy Notice* (1907) 14 Mans. 133; 96 L.T. 133.
(2) *In re O.C.S. (A Debtor)* [1904] 2 K.B. 161.

BANKRUPTCY PETITION.

Ong Kian Wei for the creditor company.

Emily Wilfred (Mrs.) (Asst. Official Assignee) for the Official Assignee.

Cur. Adv. Vult.

Rajah J. : This matter arises out of a Bankruptcy Petition dated February 3, 1986 and filed on the same day by the creditor company against Chen Chong Fatt Willy (the debtor) on the ground that the debtor had failed to comply with the requirements of a bankruptcy notice issued against him on October 23, 1985 and served on him on November 1, 1985 and had thereby committed an act of bankruptcy on November 9, 1985. The bankruptcy notice had required the debtor to pay the creditor company the sum of $26,649.16 being the total amount due on two judgments obtained by them against the debtor in the High Court of Singapore on June 24, 1985 and on July 8, 1985 in Suit No. 7935 of 1984.

An objection to the Petition was taken by the Official Assignee on the ground that a bankruptcy notice is bad if founded upon two separate judgments as, indeed, was the case here and that therefore the petition must fail. Counsel for the creditor company argued that although they were two separate judgments obtained in one suit they were really one final judgment, arising out of a breach of an agreement against the debtor.

In the suit the creditor company had proceeded under Order 14 for final judgment against the defendant for the sum of $24, 676,78, the amount claimed in the statement of claim, and interest at 8% per annum and costs.

The Order 14 Summons came up for hearing before the Registrar on June 24, 1985 when a consent judgment was entered by the plaintiffs in the sum of $2,000/- and hearing on the balance of the claim was adjourned to July 8, 1985 when the court after hearing both parties adjudicated upon the balance of the creditor company's claim and gave judgment for them in the sum of $22,676.82 with $1,272.38 being interest at the rate of 8% per annum from November 5, 1984 to the date of judgment amounting in all to $23,949.16 and $700.00 costs.

It is well accepted that a bankruptcy petition cannot be founded on two separate judgments even though it may be obtained in the same suit. The authority is *In re a Bankruptcy Notice*.[1] Again in the case of *In re O.C.S. (A Debtor)*,[2] the head note of which reads:

> "A receiving order was made against a debtor, the act of bankruptcy being non-compliance with the Bankruptcy Notice. On appeal from the order it was objected that the bankruptcy notice was bad because it was founded on two judgments debts (as was decided by the Court of Appeal *In re Low* [1900] 1 QB 147) and that consequently there was no act of bankruptcy. **Held**, that the objection was fatal to the receiving order, and, in accordance with *In re Collier* (1891) 8 Morr. 80, 83, that leave to amend the bankruptcy notice ought not to be given."

In this particular case I held that there were two judgments although they were in the same suit, one a consent judgment dated June 24, 1985 for $2,000/- and the other a contested judgment dated July 8, 1985 for $24,676.78. Execution on these two judgments would have to be levied separately (see Order 45 rule 1(a) and Order 46 rule 4 R.S.C.).

Having held that there were two judgments I

refused leave to amend the bankruptcy notice whereupon counsel for the creditor company asked for leave to withdraw the petition, to which I acceded.

Order accordingly.

Solicitors: *William W.N. Lai & Co.*

GOH TENG HOON & ORS. v. CHOI HON CHING

[O.C.J. (Sinnathuray J.) August 19, 1986]

[Singapore – Motion in D.C.A. No. 13 of 1986]

Practice and Procedure – Security for costs – Whether Subordinate Courts Rules 1986, O.1 r.2 applies to appeals under O.54 r.3 – Subordinate Courts Rules 1970, O.49 r.3 – Subordinate Courts Rules, 1986, O.1 r.2(2) & O.54 r.3.

Practice and Procedure – Security for costs – Whether $1,000 under the 1970 Rules or $1,500 under the 1986 Rules – One notice of appeal for more than one appellant – One set of costs notwithstanding more than one appellant.

District Court – Appeal from District Court to High Court – District Court functus officio – Whether appeal a proceeding "pending" in the District Court – Subordinate Courts Rules 1986, O.54 r.3.

On March 31, 1986 judgment was pronounced in the District Court against the defendants now the appellants under the Notice of Appeal dated April 11, 1986. The appellants filed their Notice of Appeal on that day and paid in as security for costs a sum of $1,000.00. On objection taken by the respondent, on April 29, 1986 the appellants paid in a further sum of $500.00 (making a total of $1,500) as security for costs in respect of the appeal.

The issues before the court were as follows:–

(1) whether the appellants have to pay security for costs of $1,000 under the 1970 Rules or $1,500 under the 1986 Rules for their appeal from the District Court action;

(2) where there is more than one appellant in a notice of appeal, whether security for costs should be provided by each of the appellants.

Held: (1) once a District Court has given judgment, except for matters relating to execution of the judgment, the District Court is *functus officio* and there can be no issue before it on which it had earlier exercised its jurisdiction;

(2) an appeal from the District Court to the High Court is not a proceeding "pending" in the District Court under the transitional provision of the 1986 Rules. The 1986 Rules apply and the security for costs is $1,500 on the notice of appeal filed by the appellants in respect of their appeal from the District Court to the High Court;

(3) a notice of appeal can have more than one appellant, and it is not required that there should be a separate notice of appeal for each appellant;

(4) under Order 54 rule 3(1), security for costs on a notice of appeal from a District Court action is $1,500, notwithstanding that there is more than one appellant;

(5) in the present case, there were good grounds to give an extension of time to the appellants.

[*Obiter Dictum:* Rules of Court must be applied towards saving of costs for litigants and not increasing the costs of litigation.]

Case referred to:

(1) *Yap Chin Fook* v. *Thean Lip Thoong* (1922), 5 F.M.S.L.R. 1.

MOTION.

Liu Yuen Ming for the applicant/respondent.

Rajan S. Nair for the respondents/appellants.

Cur. Adv. Vult.

Sinnathuray J.: This notice of motion taken out by the respondent raises two practical matters relating to civil litigation. They both arise from the coming into force of the Subordinate Courts Rules, 1986 ("the 1986 Rules") though the second one could also arise under the Subordinate Courts Rules, 1970 ("the 1970 Rules").

In the motion it is sought that –

(1) the certificate for security for costs and notice of appeal filed by the appellants on April 11, 1986 be set aside;

(2) the certificate for security for costs filed by the appellants on April 29, 1986 be set aside;

(3) costs be provided in respect of this application.

The relevant facts are that on March 31, 1986, judgment was pronounced in the District Court in District Court Summons No. 1810 of 1983 against the defendants, now the appellants under the Notice of Appeal dated April 11, 1986. On that day when the appellants filed their Notice of Appeal they paid in as security for costs a sum of $1,000.00. Later, on objection taken by the respondent, on April 29, 1986 the appellants paid in a further sum of $500.00 making a total of $1,500 as security for costs in respect of the appeal.

The 1986 Rules came into force on March 1,